



## Transportation Updates and Regulatory News (TURN)

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### FMCSA Proposes Crash Preventability Demonstration Program

On July 12, 2016, the Federal Motor Carrier Safety Administration (FMCSA) published a proposal in the Federal Register to develop and implement a demonstration program to determine the efficacy of preventability determinations on certain types of crashes that are generally less complex. The agency proposes to accept requests for data reviews (RDR) that seek to establish the non-preventability of certain crashes through its national data correction system known as DataQs. The FMCSA notice proposes that the agency would accept an RDR, as part of this program, when documentation establishes the crash was not preventable by the motor

carrier or commercial driver. The proposed minimum time period for this crash preventability demonstration program would be 24 months. Comments on the proposed Crash Preventability Program are due by September 12, 2016, and FMCSA's response to comments on its Crash Weighting Analysis can be viewed in docket number [FMCSA FRDOC 0001](#).

Commercial drivers and motor carriers have long been concerned that crashes that are not their fault remain part of their FMCSA safety record in the [Motor Carrier Management Information System](#) (MCMIS) and on the Compliance Safety and Accountability, Safety Management System, Behavior

Analysis and Safety Improvement Categories (BASICS) [Crash Indicator](#). The Crash Indicator is based on information from State-reported crashes and provides histories or patterns of high crash involvement, including frequency and severity.

### Update on Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea

The extended comment period for the FMCSA's/Federal Railroad Administration's (FRA) request for data and information on the prevalence of moderate-to-severe obstructive sleep apnea (OSA) among individuals occupying safety sensitive positions in highway and rail transportation ended on July 8, 2016. The agencies also sought information



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on OSA's potential consequences for the safety of rail and highway transportation, and potential costs and benefits from regulatory actions that address the safety risks associated with workers in safety sensitive positions who have OSA. The comments may be viewed in docket number [FMCSA-2015-0419](#).

## Pre-Employment Screening Program Driver Data Dissemination Update

On June 30, 2016, the Owner-Operator Independent Drivers' Association (OOIDA) filed a [reply brief](#) with the U.S. Court of Appeals for the First Circuit. This brief appeals the Massachusetts District Court's September 30, 2015 [dismissal](#) of OOIDA's complaint regarding FMCSA's [Pre-Employment Screening Program \(PSP\)](#). OOIDA maintains that FMCSA's PSP should not disseminate inspection reports that contain references to alleged safety violations that have not been determined to be serious driver-related safety violations. PSP helps carriers make more informed hiring decisions by providing secure, electronic access to a commercial driver's 5-year crash and 3-year inspection history from MCMIS.

## Safety Fitness Determination Notice of Proposed Rulemaking Update

The extended comment period concerning FMCSA's proposed methodologies for issuance of safety fitness determinations (SFD) for motor carriers, which was originally published on January 21, 2016, ended on June 23, 2016. The proposed methodologies would determine when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce based on: (1) the carrier's on-road safety performance in relation to five of the Agency's seven Behavioral Analysis and Safety Improvement Categories

(BASICs), (2) an investigation, or (3) a combination of on-road safety data and investigation information. The intended effect of this action is to more effectively use FMCSA data and resources to identify unfit motor carriers and to remove them from the Nation's roadways. Comments can be viewed in docket number [FMCSA-2015-0001](#).

## Audit Initiated of Commercial Motor Vehicle Loading and Unloading Delays

On June 15, 2016, the U.S. Department of Transportation's Office of the Inspector General (OIG) [initiated an audit](#) to report on the impact of loading and unloading delays in areas such as the economy and efficiency of the transportation system. The objectives of the audit are to: (1) assess available data on motor carrier loading and unloading delays, and (2) provide information on measuring the potential effects of loading and unloading delays. The Fixing America's Surface Transportation Act of 2015 (FAST Act) directed FMCSA to issue regulations on collecting data on loading and unloading delays and OIG to conduct the audit.

To reduce driver fatigue and fatigue-related crashes, FMCSA's current hours of service regulations limit the number of hours a driver can work per day to 14. However, delays at shipping and receiving facilities during cargo loading and unloading may result in travel delays and lost wages for drivers. Truckers who experience delays at these facilities may then drive faster to make deliveries within hours-of-service limits or operate beyond hours-of-service limits and improperly log their driving time, thus increasing the risk of crashes and fatalities.



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## Electronic Logging Devices for Commercial Truck and Bus Industries Update

On June 15, 2016, FMCSA filed a [reply brief](#) to the Owner-Operator Independent Drivers Association [Petition for Review](#) of the final rule on electronic logging devices (ELD) with the U.S. Court of Appeals for the 7th Circuit. The final rule, which can be viewed in docket number [FMCSA-2010-0167-2284](#), requires the use of ELDs by December 18, 2017, to document drivers' compliance with hours of service limits. On June 22, 2016, the American Trucking Associations filed a [brief](#), and the Trucking Alliance for Driver Safety and Security and Advocates for Highway and Auto Safety filed a [joint brief](#) in support of FMCSA's final rule. [Oral arguments](#) are scheduled for September 13, 2016.

## FMCSA Awards \$32 Million to Border States to Ensure Commercial Truck and Bus Safety Enforcement

On June 14, 2016, FMCSA announced it has awarded \$32 million in [financial assistance](#) to 15 States to help ensure that foreign truck and bus drivers and vehicles involved in international commerce at or near border crossings with Canada and Mexico are properly licensed to operate on U.S. roads.

The [Border Enforcement Grant Program](#) is a federal discretionary grant program focused on reducing crashes, fatalities, and injuries by drivers and vehicles involved in international commerce by ensuring that these motor carriers, drivers, and vehicles are in compliance with U.S. commercial vehicle safety regulations, including financial responsibility, operating authority, driver qualifications and licensing, and vehicle maintenance.

## Passengers in Commercial Motor Vehicles Must Use of Seat Belts

Effective August 8, 2016, passengers in property-carrying commercial motor vehicles (CMVs) must use the seat belt assembly whenever the vehicles are operated on public roads in interstate commerce. This rule holds motor carriers and drivers responsible for ensuring that passengers riding in the property-carrying CMV are using the seat belts required by the Federal Motor Vehicle Safety Standards (FMVSSs). Comments on the final rule, which was published June 7, 2016, can be viewed in docket number [FMCSA-2015-0396](#).

## FMCSA Civil Penalties Adjusted for Inflation

Effective August 1, 2016, FMCSA has [amended the civil penalties](#) listed in its regulations to ensure that the civil penalties assessed or enforced by the Agency reflect the statutorily mandated ranges as adjusted for inflation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), FMCSA is required to promulgate a catch-up adjustment through an interim final rule. Pursuant to the Administrative Procedure Act, FMCSA finds that good cause exists for immediate implementation of this interim final rule because prior notice and comment are unnecessary, per the specific provisions of the 2015 Act. The notice can be viewed in docket number [FMCSA-2016-0128](#).

## Heavy Vehicle Speed Limiters Update

According to the July 2016 [Report on DOT Significant Rulemakings](#), the projected date for clearance and publication of the proposed rule for Heavy Vehicle Speed Limiters is "Summer 2016." This joint rulemaking by FMCSA and the National Highway Traffic Safety



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Administration (NHTSA) responds to petitions from the American Trucking Associations and Roadsafe America to require the installation of speed limiting devices on heavy trucks. In response to the petitions, NHTSA requested public comment in [Docket No. NHTSA-2007-26851](#) on the subject and received thousands of comments supporting the petitioner's request. Based on the available safety data and the ancillary benefit of reduced fuel consumption, this rulemaking considers a new Federal Motor Vehicle Safety Standard requiring the installation of speed limiting devices on heavy trucks.

## Commercial Driver's License Drug and Alcohol Clearinghouse Update

August 28, 2016 is the [projected date](#) for publication of the final rule to create a central database for verified positive controlled substances and alcohol test results for commercial driver's license (CDL) holders and refusals by such drivers to submit to testing. This rule would require employers of CDL holders and service agents to report

positive test results and refusals to test to the Clearinghouse. Prospective employers, acting on an application for a CDL driver position with the applicant's written consent to access the Clearinghouse, would query the Clearinghouse to determine if any specific information about the driver applicant is in the Clearinghouse before allowing the applicant to be hired and to drive CMVs. This rule is intended to increase highway safety by ensuring CDL holders, who have tested positive or have refused to submit to testing, have completed the U.S. DOT's return-to-duty process before driving CMVs in interstate or intrastate commerce. It is also intended to ensure that employers are meeting their drug and alcohol testing responsibilities. Provisions in this rulemaking would also be responsive to requirements of the Moving Ahead for Progress in the 21st Century Act which required creation of the Clearinghouse by October 1, 2014.

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